

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD WOLBERT and MARY ANN
WOLBERT,

Plaintiffs-Appellants,

v

JAMES E. COPPING,

Defendant-Appellee.

UNPUBLISHED
May 29, 2003

No. 238700
Alpena Circuit Court
LC No. 00-002987-CH

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's judgment granting them partial relief only for their trespass claim. This boundary dispute arose when defendant constructed a garage and breakwater that partially extended northward across the parties' common property line. Following a bench trial, the court found that plaintiffs' predecessor in title had acquiesced to a property line north of the garage but south of a portion of the breakwater. Therefore, the trial court granted plaintiffs removal of the encroaching portion of the breakwater but denied plaintiffs any other relief. We affirm.

Plaintiffs first argue that defendant failed to present any evidence regarding doubt over the property line. We disagree. We review for clear error a trial court's factual findings following a bench trial. MCR 2.613(C); *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). The trial court's conclusions of law, however, are reviewed de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

When a property owner mistakenly and detrimentally adheres to an incorrect boundary for fifteen years, the right to assert the true boundary is lost. MCL 600.5801; *Kipka v Fountain*, 198 Mich App 435, 438-439; 499 NW2d 363 (1993). Defendant presented evidence that he and his predecessor, Judith Stephens, mistook a fence line for the platted common boundary between his lot and plaintiffs' lot. Defendant also presented evidence that plaintiffs' predecessor, Gladys Bouchard, mistook the fence line for the boundary when she signed an approval letter so that defendant could construct a garage. Therefore, the trial court did not clearly err when it found that the parties' adherence to the fence line was rooted in mistake.

Plaintiffs also argue that by the time of trial, the fence had fallen into such a state of disrepair that it could not legally satisfy the boundary requirement. Plaintiffs contend that

defendant's failure to maintain the fence as the incorrect line's "monument" precludes him from establishing it as the legal property line. Plaintiffs improperly base their argument on a theory of acquiescence that applies in cases where the statutory period has not yet expired. *Weisenburger v Kirkwood*, 7 Mich App 283, 289; 151 NW2d 889 (1967). For purposes of statutory acquiescence, it is enough that defendant identified the approximate location of the line by a preponderance of the evidence. *Walters, supra* at 458. Defendant's surveyor, Douglas St. Charles, testified that he only found two posts of the original fence remaining but that they allowed him to detect and sketch a line of occupation. St. Charles also testified that the fence had visibly affected the growth of the trees along its line, so that the line of occupation was apparent. Because defendant presented strong evidence about the fence's location and effect, the trial court did not clearly err when it established the new boundary along its line.

Plaintiffs also argue that our Supreme Court's decision in *Niva v Fredrickson*, 355 Mich 70, 73; 94 NW2d 69 (1959), precludes defendant from essentially obtaining a fifty-eight-foot wide lot when he knew he only purchased a lot fifty feet wide. The Court in *Niva*, however, specifically found that the facts before it did not support acquiescence. *Id.* at 73. Therefore, *Niva* does not apply here. When acquiescence applies, later knowledge of the true line does not matter as long as the neighbors continuously adhere to the incorrect line for the statutory period. See *Sackett v Atyeo*, 217 Mich App 676, 682-683; 552 NW2d 536 (1996). We also find that plaintiffs confuse the tacking principles that apply to acquiescence with those that apply to adverse possession. Our Supreme Court has long held that acquiescence, unlike adverse possession, does not require a grant of the additional property before a predecessors' time of possession "tacks." *Siegel v Renkiewicz Estate*, 373 Mich 421, 426; 129 NW2d 876 (1964). Therefore, plaintiffs' argument to the contrary fails.

Plaintiffs also argue that neither adverse possession nor estoppel apply to transfer the mistakenly possessed property to defendant. Because the trial court did not apply these theories and defendant did not raise them as alternative grounds to affirm, we need not address them.

Finally, plaintiffs argue that the trial court should have awarded them monetary damages in addition to equitable relief. However, in light of the absence of damage evidence and defendant's apparent willingness to remove the encroaching portion of breakwater, we conclude that the trial court did not abuse its discretion by awarding removal alone. *Kernen v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998).

Affirmed.

/s/ Michael R. Smolenski
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell